

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE: hhgregg, Inc., <i>et al.</i> , ¹ Debtors.	CASE NO. 17-01302-RLM-11 (Joint Administration Requested)
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**UNITED STATES TRUSTEE’S LIMITED OBJECTION
TO DEBTORS’ MOTION FOR AN ORDER, PURSUANT TO SECTIONS 105(a),
363(c), 503(b)(1), 1107(a), AND 1108 OF THE BANKRUPTCY CODE,
AUTHORIZING (I) THE DEBTORS TO HONOR PREPETITION OBLIGATIONS
RELATED TO CUSTOMER PROGRAMS AND CONSIGNMENT
ARRANGEMENTS AND OTHERWISE CONTINUE CUSTOMER AND
CONSIGNMENT ARRANGEMENTS IN THE ORDINARY COURSE OF
BUSINESS AND (II) BANKS TO HONOR AND PROCESS CHECK AND
ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

In support of her Limited Objection (the “Objection”) to the Debtors’ Motion For An Order, Pursuant To Sections 105(a), 363(c), 503(b)(1), 1107(a), And 1108 Of The Bankruptcy Code, Authorizing (I) the Debtors to Honor Prepetition Obligations Related to Customer Programs and Consignment Arrangements and Otherwise Continue Customer and Consignment Arrangements in the Ordinary Course of Business and (II) Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (“Customer Programs Motion”) Nancy J. Gargula, the United States Trustee for Region 10 (the “U.S. Trustee”), by and through her undersigned counsel, states as follows:

¹ The debtors in these cases are hhgregg, Inc., Gregg Appliances, Inc., and HHG Distributing LLC. The debtors have requested that the three cases be jointly administered. See Docket in cases 17-01302-RLM-11, 17-01303-RLM-11 and 17-01304-RLM-11.

1. This Court has jurisdiction to hear this Objection under 28 U.S.C. §§ 157 and 1334.

2. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with the administrative oversight of cases commenced pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). This duty is part of the U.S. Trustee’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting the U.S. Trustee has “public interest standing” under 11 U.S.C. § 307, which goes beyond mere pecuniary interest).

3. Under 11 U.S.C. § 307, the U.S. Trustee has standing to be heard on any issue in any case or proceeding, including with regard to this Objection.

BACKGROUND

4. On March 6, 2017, the Debtors filed voluntary petitions for relief under chapter 11 of Title 11 of the Bankruptcy Code.

5. An official committee of creditors has not yet been appointed in this case.

6. The Debtors have continued in possession of their properties and have continued to operate and maintain their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. Concurrently with the Customer Programs Motion, the Debtors have filed certain other motions and applications also seeking certain “first

day” relief on an emergent basis, including multiple other motions seeking authority to pay pre-petition obligations at the outset of these cases.

8. The Debtors have also filed the Declaration of Kevin J. Kovacs In Support Of Chapter 11 Petitions and Requests for First Day Relief (the “Kovacs Declaration”) (Docket No. 19).

ARGUMENT

9. The U.S. Trustee has concerns with the relief requested for various customer programs and policies (collectively “Customer Programs”) as described in the Customer Programs Motion.

10. While the U.S. Trustee does not object to the request to allow ongoing ordinary course business operations as it relates to many of the Customer Programs, some of the relief requested is not consistent with the Bankruptcy Code and Rules. To the extent that the relief requested is inconsistent with the Bankruptcy Code and Rules, the U.S. Trustee objects to that relief as detailed below.

11. The Debtors seek to continue honoring all gift cards (“Gift Cards”) sold or issued to promote customer satisfaction. Debtors disclose the maintenance of “detailed transaction data regarding the sale of Gift Cards, and track both the actual amount of purchased Gift Cards outstanding and the anticipated amount of Gift Cards that will actually be redeemed.” Customer Program Motion ¶ 11. Yet, the Customer Program Motion fails to disclose if any one of the Gift Cards sold or issued exceeds the priority amounts allowed by 11 U.S.C. §507(a)(7). To the extent that Debtors can verify that all outstanding

Gift Cards are below the priority amount authorized by §507(a)(7), the U.S. Trustee does not object to allowing Debtors to honor the Gift Cards in the ordinary course of business.

12. In conjunction with the Gift Cards, the Debtors propose to pay their Plastics Vendors, as defined in the Customer Programs Motion, the undisclosed prepetition amounts owed. The Debtors have not provided adequate information and evidence to meet the high burden set forth by the Seventh Circuit in *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004), necessary to establish that payment of pre-petition obligations for all of the proposed critical vendors is warranted or that the Debtors will suffer irreparable harm if the relief sought is denied. As such, the U.S. Trustee objects to payment to Plastics Vendors for prepetition amounts owed.

13. The Debtors have a Rewards Program, as defined in the Customer Programs Motion, which uses a third party vendor, Blackhawk, to issue Rewards Cards, as defined in the Customer Programs Motion. The Customer Program Motion fails to disclose if any one of the Rewards Cards issued exceeds the priority amounts allowed by 11 U.S.C. §507(a)(7). To the extent that Debtors can verify that all outstanding Rewards Cards are below the priority amount authorized by §507(a)(7), the U.S. Trustee does not object to allowing Debtors to honor the Rewards Cards in the ordinary course of business.

14. In conjunction with the Rewards Program, the Debtors propose to pay Blackhawk, the third party processor of the Rewards Program,

approximately \$10,000 on account of prepetition obligations. The Debtors have not provided adequate information and evidence to meet the high burden set forth by the Seventh Circuit in *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004), necessary to establish that payment of pre-petition obligations the proposed critical vendor is warranted or that the Debtors will suffer irreparable harm if the relief sought is denied. As such, the U.S. Trustee objects to payment to Blackhawk for prepetition obligations.

15. The Debtors disclose Customer Deposits, as defined in the Customer Programs Motion, of approximately \$54,000,000. Debtors do not detail how many customers have Customer Deposits recorded, however it is likely that many, if not the majority, of the Customer Deposits exceed the allowable priority amount set for in §507(a)(7). Section 507(a)(7) allows “unsecured claims of individuals, to the extent of \$2,850 for each such individual, arising from the deposit before the commencement of the case, of money in connection with the purchase . . . of property” Without knowing how many customers have Customer Deposits exceeding the priority amount, the U.S. Trustee objects to the honoring of all Customer Deposits. While she understands the need to allow for ongoing business operations, the U.S. Trustee believes any interim order entered should limit Debtors from honoring Customer Deposits that exceed the priority amount authorized by §507(a)(7) or limit the amount Debtors can honor to an amount certain, e.g. \$1,000,000 until final hearing on the Customer Programs Motion.

16. To the extent the Debtors seek payment to Warrantech on the Warrantech Warranties for pre-petition amounts owed, the Debtors have not provided adequate information and evidence to meet the high burden set forth by the Seventh Circuit in *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004), necessary to establish that payment of pre-petition obligations for the proposed critical vendor is warranted or that the Debtors will suffer irreparable harm if the relief sought is denied. Additionally, Debtors disclose that a full reconciliation has not occurred on the amounts owed to Warrantech and the offset amounts owed from Warrantech to Debtors. Until such reconciliation is completed, payment on any obligation, whether prepetition or not, is premature.

17. The U.S. Trustee submits that approval of the Customer Programs Motion need not be granted on an emergent, First Day basis, on inadequate notice to creditors and parties in interest, and with less than 24 hours' time for creditors and parties in interest to consider the Customer Programs Motion, and to file responses and objections with the Court.

18. The U.S. Trustee reserves the right to supplement her limited Objection, or to withdraw her Objection, as the case may be, after an opportunity to more thoroughly review the Customer Programs Motion or after obtaining additional information in support of the Customer Programs Motion.

Date: March 7, 2017

Respectfully submitted,

NANCY J. GARGULA
United States Trustee

By: /s/ Ronald Moore
Ronald Moore
Assistant United States Trustee

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2017, a copy of the foregoing *Objection* was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Wendy D. Brewer on behalf of Creditor Haier US Appliance Solutions, Inc.
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I further certify that on March 7, 2017, a copy of the foregoing *Objection* was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

None

/s/ Ronald J. Moore
Ronald J. Moore
Assistant United States Trustee